



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120416008-2525-02]

RIN 0648-BB72

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Amendment 34

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 34 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule removes the income qualification requirements for renewal of Gulf of Mexico (Gulf) commercial reef fish permits and increases the maximum crew size to four for dual-permitted vessels (i.e. vessels that possess both a charter vessel/headboat permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish) that are fishing commercially. The intent of this rule is to remove permit requirements that NMFS views as no longer applicable to current

commercial fishing practices and to improve safety-at-sea in the Gulf reef fish fishery.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Electronic copies of Amendment 34, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and to OMB, by e-mail at OIRASubmission@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727-824-5305; e-mail: Cynthia.Meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 10, 2012, NMFS published a notice of availability for Amendment 34 and requested public comment (77 FR 40561).

NMFS published a proposed rule for Amendment 34 on July 18, 2012, and requested public comment (77 FR 42251). The purpose and rationale for the actions contained in this final rule can be found in the proposed rule and are not repeated here.

Management measures implemented through this final rule eliminate the income qualification requirements for renewal of commercial Gulf reef fish permits and increase the maximum crew size from three to four for dual-permitted vessels.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 11 comment letters, including nine from private citizens and two from fishing organizations. Of these comment letters, 10 were in support of the proposed rule and one opposed the proposed rule. Three of the comment letters were an identical form.

Comment 1: The comments supporting the proposed rule insisted that the income requirement was no longer needed due to other existing regulations for the reef fish fishery. The comment letter opposing the proposed rule suggested that by removing the income requirement, there would be no incentive to report catch.

Response: NMFS agrees that the income requirement is no longer needed in the reef fish fishery. Currently, to obtain or

renew a commercial vessel permit for reef fish, more than 50 percent of the applicant's earned income must have been derived from commercial fishing or from charter fishing during either of the 2 calendar years preceding the application. Due to recent regulatory changes in the commercial sector including establishment of individual fishing quotas (IFQs) for the most commercially sought after species, NMFS views existing income qualification requirements as no longer necessary. The regulations for the reef fish fishery require dealer reporting and the IFQ programs require trip declarations, 3-hour notifications, and detailed reporting. These requirements and the potential enforcement measures are considered adequate incentives for fishermen to accurately report their catches in the absence of the income requirement.

Further, the relative ease of fulfilling or circumventing income requirement provisions has rendered them largely meaningless. Currently, NMFS requires only that applicants submit affidavits attesting that they meet the minimum income requirements. These affidavits are not routinely validated by NMFS, because doing so is difficult and costly. In addition, business entities such as corporations and partnerships are the most common form of permitted entity, and their operations are easily structured so as satisfy the income

requirement. Removing these requirements will streamline the permit renewal process and eliminate ineffective regulations.

Comment 2: Regarding the increase in crew size for dual-permitted vessels, the comments supporting this change were based on improving safety-at-sea and allowing compliance with current Occupational Safety and Health Administration (OSHA) regulations for commercial diving operations. The comment opposing the change suggests that increasing the crew size would result in overfishing by spear fishermen.

Response: The rule increases the maximum crew size regulations from three to four people for dual-permitted vessels without a certificate of inspection when fishing commercially. Historically, limiting the crew size on a dual-permitted vessel when fishing commercially was intended to prevent a vessel from taking out a number of passengers under the pretense of making a charter trip, but subsequently selling the catch. In addition to the implementation of the IFQ programs for most of the commercially harvested species, all commercial reef fish vessels are required to be equipped with vessel monitoring systems. Vessel monitoring systems (VMSs) track the location of individual vessels in the fleet. Having a VMS on board makes it clear when a vessel is operating as a commercial vessel. Dual-permitted commercial spear fishermen requested an increase in crew size to allow two divers in the water, diving as a buddy

pair, while two crew members remain aboard the vessel. This conforms to safe operating procedures for commercial diving (according to OSHA regulations) and directly promotes the safety of human life at sea. The change in crew size could slightly increase the vessel's efficiency in overall fishing effort by allowing the crew to rest in between shifts. Spearfishing is a minor component of the Gulf reef fish fishery and any increase in efficiency would be a small percentage of overall harvest. If the dual-permitted vessels do increase the overall fishing effort, then the regulations for the commercial reef fish fishery requiring detailed monitoring and reporting including VMS, trip declaration, and landing notifications would provide the catch information. Additionally, other management measures such as quotas and associated closures are tailored to prevent overfishing of species in the reef fish fishery and there is no evidence that an increase in crew size would lead to overfishing.

Classification

NMFS determined that this final rule and Amendment 34 are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of management and Budget (OMB) under control number 0648-0205. NMFS has determined the removal of the income qualification requirements for commercial Gulf reef fish permit holders will result in a net decrease in the time to complete the Federal Permit Application (for all applicants), however, the current burden estimate (20 minutes per applicant) to complete the application form would not decrease because the time to complete the Income Qualification Affidavit is minimal compared to the time to complete the entire application. These estimates of the public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection-of-information. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: October 15, 2012

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.2, the definition for "charter vessel" is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Charter vessel means a vessel less than 100 gross tons (90.8 mt) that is subject to the requirements of the USCG to carry six or fewer passengers for hire and that engages in charter fishing at any time during the calendar year. A charter vessel with a commercial permit, as required under § 622.4(a)(2), is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew, except for a charter vessel with a commercial vessel permit for Gulf reef fish. A charter vessel that has a charter vessel permit for Gulf reef fish and a commercial vessel permit for Gulf reef fish is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than four persons aboard, including operator and crew. A charter vessel that has a charter vessel permit for Gulf reef fish, a commercial vessel permit for Gulf reef fish, and a valid Certificate of Inspection (COI) issued by the USCG to carry

passengers for hire will not be considered to be operating as a charter vessel provided--

(1) It is not carrying a passenger who pays a fee; and

(2) When underway for more than 12 hours, that vessel meets, but does not exceed the minimum manning requirements outlined in its COI for vessels underway over 12 hours; or when underway for not more than 12 hours, that vessel meets the minimum manning requirements outlined in its COI for vessels underway for not more than 12-hours (if any), and does not exceed the minimum manning requirements outlined in its COI for vessels that are underway for more than 12 hours.

* * * * *

3. In § 622.4, the introductory text for paragraph (a)(2)(v) is revised; paragraphs (m)(3), (m)(4), and (m)(5) are removed; paragraph (m)(6) is redesignated as paragraph (m)(3); and paragraph (m)(2) is revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) Gulf reef fish. For a person aboard a vessel to be eligible for exemption from the bag limits, to fish under a quota, as specified in § 622.42(a)(1), or to sell Gulf reef fish in or from the Gulf EEZ, a commercial vessel permit for Gulf reef fish must have been issued to the vessel and must be on

board. If Federal regulations for Gulf reef fish in subparts A, B, or C of this part are more restrictive than state regulations, a person aboard a vessel for which a commercial vessel permit for Gulf reef fish has been issued must comply with such Federal regulations regardless of where the fish are harvested. See paragraph (a)(2)(ix) of this section regarding an IFQ vessel account required to fish for, possess, or land Gulf red snapper or Gulf groupers and tilefishes and paragraph (a)(2)(xiv) of this section regarding an additional bottom longline endorsement required to fish for Gulf reef fish with bottom longline gear in a portion of the eastern Gulf. See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish.

* * * * *

(m) * * *

(2) A permit holder may transfer the commercial vessel permit for Gulf reef fish to another vessel owned by the same entity. A permit holder may also transfer the commercial vessel permit for Gulf reef fish to the owner of another vessel or to a new vessel owner when he or she transfers ownership of the permitted vessel.

* * * * *

[FR Doc. 2012-25821 Filed 10/18/2012 at 8:45 am; Publication
Date: 10/19/2012]